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Pedro Xammar Bove

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VENABLE LLP

P.O. BOX 34385

WASHINGTON, DC 20043-9998

EXAMINER

WILBUR, NICHOLAS A

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,851	<b>Applicant(s)</b> XAMMAR BOVE, PEDRO	
	<b>Examiner</b> NICHOLAS WILBUR	<b>Art Unit</b> 4127	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/28/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This communication is a first office action on the merits. Claims 1-5, as originally filed, are currently pending and have been considered below.

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "securing means of the position of the inner tube with regard to the outer base tube" of claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Page 6, lines 4 and 8 contain the word "orifice 10" where character 10 was previously referred to in the entirety of the specification as "through-hole 10." Consistency of terms is required..

Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The "securing means of the position of the inner tube with regard to the outer base tube is not described in the specification. No new matter may be entered.

### ***Claim Objections***

4. Claims 1, 2, 4, and 5 are objected to because of the following informalities:

Claim 1 line 3, claim 1 line 8, claim 2 line 4, claim 4 line 3, and claim 5 line 3 contain the word "said" where throughout the entirety of the claims the word "the" is used when referring back to a claimed element.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, line 2 contains the phrase "such as" which renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claims 2 and 3, claim 2 line 5 and claim 3 lines 3&4 contain the word "it" which renders the claim indefinite because it is unclear what "it" is referring to.

Regarding claims 4 and 5, claim 4 line 3 and claim 5 line 2 contain the word "preferably" which renders the claim indefinite because it is unclear whether having a section the same as that of the stop block is required.

Regarding claims 4 and 5, claim 4 line 4 and claim 5 line 4 contain the word "considerably" which renders the claim indefinite because it is unclear how wide is considerably wide.

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Regarding claims 4 and 5, line 3 contains the phrase "a section the same as the stop block" which renders the claim indefinite because it is unclear what is meant by saying this section is the "same" as the stop block, whether it is a dimension or another characteristic.

Claims 4 recites the limitations "second through-hole, orifice, and lid" and none of which are contained in claim 2, which claim 4 is dependent upon. There is insufficient antecedent basis for these limitations in the claim.

Claims 4 and 5 recite the limitation "the orifice" in line 2 of each. There is insufficient antecedent basis for this limitation in these claims.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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8. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Fernand (FR 2,221,013).

Regarding claim 1, Fernand discloses a prop that is extendable (as shown between Figures 2 and 4) by moving the inner tube (10) coaxially disposed in an outer base tube (7), which comprises securing means of the position of the inner tube with regards to the outer base tube (nut 5a) and a safety device which prevents the total separation of both tubes (rod 16, stopper at top of rod 16, and the lid on the bottom of outer tube 7). The safety device comprises connection means (rod 16) between the two tubes (as shown in Figure 4) and permits the movement of the lower end of the inner tube (as shown in Figure 2) between two fixed points, the first point is disposed in the inside of the inner base tube and the second point is determined by the length of the connection means (as shown in Figure 2).

Also regarding claim 1, the phrase “means of the removal of an inner tube” is not being considered as a means plus function under 35 U.S.C. 112, sixth paragraph. If applicant intends to invoke a means plus function, the claim should be amended to read “means for removing an inner tube.” He should also make certain that the specification clearly and precisely spells out which disclosed structure corresponds to the claimed means.

Regarding claim 2, Fernand further discloses wherein the connection means is composed of a thin, elongated connection element (rod 16), longitudinally disposed on the inside of the outer base tube (as shown in Figure 2), the first end of the connection element being fixed on one end of the outer tube (connected to bottom 11), while the opposite end inserted in the inner tube is equipped with a stop block (blocking element at top of rod 16) which prevents removal from the inner tube by colliding with a retaining element joined to the lower end (the lid at the bottom of outer tube 7 shown in Figure 2 which contains hole), preventing the exit of the stop block from the inside of the inner tube (as shown in Figure 2).

Regarding claim 3, Fernand discloses wherein the retaining element is formed by a lid (as shown in Figure 2), which is equipped with a through-hole whose diameter is less than that of the stop block (at top of rod 16), which allows the connection element (16) to pass through the retaining element, but prevents the stop block from passing through the retaining element (as shown in Figure 2).

9. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen (6,571,426).

Regarding claim 1, Chen discloses a prop that is extendable (column 2, lines 19-21) by moving the inner tube (gliding rod 20) coaxially disposed in an outer base tube (main body 10), which comprises securing means of the position of the inner tube with



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regards to the outer base tube (column 3, lines 20-29) and a safety device which prevents the total separation of both tubes (column 2, lines 64-65). The safety device comprises connection means (guiding rod 43) between the two tubes (as shown in Figure 2) and permits the movement of the lower end of the inner tube (as shown in Figure 2) between two fixed points, the first point is disposed in the inside of the inner base tube and the second point is determined by the length of the connection means (as shown in Figure 2).

Regarding claim 2, Chen further discloses wherein the connection means is composed of a thin, elongated connection element (guiding rod 43), longitudinally disposed on the inside of the outer base tube (as shown in Figure 2), the first end of the connection element being fixed on one end of the outer tube (column 2, lines 33-43), while the opposite end inserted in the inner tube is equipped with a stop block (blocking element 44) which prevents removal from the inner tube by colliding with a retaining element joined to the lower end (the object shown in Figure 2 which contains hole 21), preventing the exit of the stop block from the inside of the inner tube (column 2, lines 62-65, it is noted that there is a typographical error, the word "smaller" should be the word "larger" in line 64, as clearly pointed out by the sentence after and in Figure 2).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen as applied to claims 1 and 2 above, and further in view of Munro (US 1,552,338).

Regarding claim 3, Chen discloses wherein the retaining element (as shown in Figure 2) is equipped with a through-hole (21) whose diameter is less than that of the stop block (44), which allows the connection element (43) to pass through the retaining element, but prevents the stop block from passing through the retaining element (column 2, lines 62-65).

Chen fails to disclose wherein the retaining element is formed by a lid.

However, Munro discloses a retaining element (as shown in Figure 1) formed by a lid (wall 9) which is equipped with a through-hole (hole 18) whose diameter is less

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than that of the stop block (knob 11), which allows the connection element (cable 12) to pass through the retaining element, but prevents the stop block from passing through the retaining element.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the prop of Chen to further include the retaining element of Munro in order to increase the stability of the prop and to reduce the likelihood of the tubes from becoming separated.

Regarding claims 4 and 5, Chen and Munro disclose all the elements of claim 3 above, and Munro further discloses wherein the tube (7) is equipped with a second through-hole (hole 13) on one side, adjacent to the first through-hole (hole 18) of the lid (wall 9), where the second through-hole (13) is the same size as the stop block (knob 11) and connected to the first through-hole (18) by a slot (slot 14), the slot is wider than the connection element (cable 12).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the prop of Chen to further include the second through-hole and slot of Munro in order to make assembly and disassembly of the prop easier, also making the device simpler to fix or store.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICHOLAS WILBUR whose telephone number is

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(571)270-5746. The examiner can normally be reached on Monday-Friday 7:30 AM- 5 PM Every Other Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on (571)272-6782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NICHOLAS WILBUR  
Examiner  
Art Unit 4127

NW

/Lynda Jasmin/

Supervisory Patent Examiner, Art Unit 4127